

GOLENBOCK EISEMAN
ASSOR BELL & PESKOE^{LLP}

Attorneys at Law | 437 Madison Ave., New York, NY 10022-7020
T (212) 907-7300 | F (212) 754-0330 | www.golenbock.com

DIRECT DIAL No.: (212) 907-7327
DIRECT FAX No.: (212) 754-0777
EMAIL ADDRESS: mweinstein@golenbock.com

March 31, 2016

Via ECF

Honorable Alison J. Nathan
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Paul Judge Fox, Appellant v. Baxter Street Condominium, Appellee, 16 Civ. 1387 (AJN)

Dear Judge Nathan:

Our firm serves as counsel to Appellee in the above referenced appeal (the "Appeal"). We write to respectfully request that the Appeal be dismissed. In the alternative, we respectfully request that the upcoming settlement be cancelled or adjourned. By way of background, the Appeal is from an order of the United States Bankruptcy Court for the Southern District of New York (the "Order") that granted Appellee relief from the automatic stay for Appellee to continue its action against Appellant in New York State Supreme Court (the "State Court"). Appellant filed a timely notice of appeal of the Order, but did not seek to stay the Order. Appellee thereafter obtained an order from the State Court providing Appellant with a writ of assistance to evict the Appellant. A copy of such order is enclosed herewith.

On February 29, 2016, Your Honor ordered that (i) the briefing schedule provided by the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") shall govern, (ii) the parties shall provide a joint appendix, (iii) the parties shall appear for a settlement conference on April 11, 2016, and (iv) the parties shall confer fourteen days prior to the settlement conference.

Pursuant to Bankruptcy Rule 8009(a)(1), Appellant was required to file and serve a designation of the record and a statement of the issues within 14 days of the notice of appeal, *i.e.*, by March 8, 2016. Over thirty days have passed since Appellant filed his notice of appeal, yet Appellant has not filed a designation of the record. This default, in turn, results in a breach of this Court's scheduling order for the reason that the briefing schedule under Bankruptcy Rule 8018 is keyed to the filing of the designation of the record and statement of the issues.

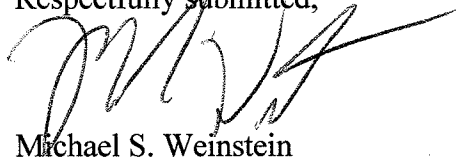
Not only has Appellant failed to undertake the most basic steps in perfecting or prosecuting this Appeal, but Appellant has also made no effort to contact Appellee regarding this Appeal or the settlement conference as required by this Court's February 29 Order. Under the circumstances, Appellee respectfully submits that holding a settlement conference at this juncture would not be a productive use of the Court's time and resources.

GOLENBOCK EISEMAN
ASSOR BELL & PESKOE^{LLP}

Honorable Alison J. Nathan
United States District Judge
Southern District of New York
March 31, 2016
Page 2

For the foregoing reasons, Appellee respectfully submits that this Court should dismiss the Appeal or, in the alternative, cancel or adjourn the settlement conference. Should the Court wish, we would be pleased to attend a hearing or telephonic conference to further explore these issues.

Respectfully submitted,



Michael S. Weinstein

Enclosure

cc: ***Via Federal Express and ECF***
J. Benjamin Greene, counsel to Appellant

NEW YORK COUNTY

PRESENT: KERN
Justice

PART 55

BOARD OF MANAGERS OF THE
BAXTER STREET CONDOMINIUM
PAUL J. FOX, ET AL.

INDEX NO. 159296/14
MOTION DATE _____
MOTION SEQ. NO. 03

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted as per the attached
order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/1/16

CYNTHIA S. KERN J.S.C.
J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

At IAS Part 55 of the Supreme Court of the State of New York, in and for the County of New York, at the Courthouse, located at 60 Centre Street, New York, New York, on the 1st day of March, 2016

P R E S E N T:

HON. CYNTHIA S. KERN,
Justice.

BOARD OF MANAGERS OF
THE BAXTER STREET CONDOMINIUM,

Plaintiff,

-against-

PAUL J. FOX, JPMORGAN CHASE BANK,
NA, UNITED STATES INTERNAL REVENUE
SERVICE, "JOHN DOE," and "JANE DOE" the
true names of said defendants being unknown to
plaintiff, the party intended to be the entity
having or claiming an interest in the premises
described in the complaint by virtue of being a
tenant, operator, or occupant in all or part of said
premises,

Defendant(s).

Index No. 159296/2014

**ORDER GRANTING
WRIT OF ASSISTANCE**

UPON the Affirmation of Receiver Doron Leiby, Esq, dated February 9, 2016, in support of the Receiver's motion for a Writ of Assistance, and all the exhibits annexed thereto, and there being no opposition thereto, and upon all the papers filed and all the proceedings had herein,

NOW, on motion of Doron Leiby, Esq, Receiver, it is

ORDERED, that the Receiver's motion is hereby granted in all respects for a writ of assistance directing the sheriff or city marshal to evict defendant Paul J. Fox from 123 Baxter

Street, Unit 2D, New York, New York 10013 (the "Unit") and possession of the Unit be turned over to the Receiver, Doron Leiby, Esq., and it is further

ORDERED, that the City Marshal or the Sheriff of New York County be and is hereby ordered, upon receipt of an entered copy of this Order to enter upon the Unit in the building known as the Baxter Street Condominium located at 123 Baxter Street, and to eject therefrom Paul J. Fox, John Doe, Jane Doe, and any and all persons holding under them, and that this Order be executed by the said City Marshal or Sheriff as though it were an execution for the delivery of possession of the Unit.

ENTER:



HON. CYNTHIA S. KERN, J.S.C.

CYNTHIA S. KERN
J.S.C.